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File No.: 60.A3483.MC92-4

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Federal Highway Administration (FHWA) Docket No. MC 92-4, Federal Motor Carrier Safety Regulations: Transportation of Hazardous materials.

The California Highway Patrol respectfully submits the following comments on the above captioned docket:

In the preamble, at page 33419, it is stated that the new permit requirement would "preempt any State requirement dealing with transportation of the same hazardous material if compliance with both the State and Federal permit requirements is not possible, or if the State requirement creates an obstacle to the *accomplishment* of the HMTA and the regulations." (emphasis added) The same preamble, however, at page 33423, states: This new permit requirement would preempt only a State permit requirement dealing with transportation of the same hazardous materials and only to the extent such a State permit is based upon a demonstration of safety fitness." (emphasis again added) Since these two statements differ significantly, and preemption is a concern to this Department, clarification in this area is needed. Without this clarification, we are unable to respond to the question regarding the effect of this proposal on our Motor Carrier **Safety** Assistance Program (MCSAP) participation.

Comments were requested on whether the safety permit requirements should be expanded to include the transportation of Hazard Zone B hazardous materials. We believe they should be extended to Hazard Zone B materials, but only when transported in bulk packaging as defined in 49 CFR 171.8, i.e., a container with an internal volume greater than 119 gallons for liquids, or a water capacity greater than 1,000 pounds for a gas.

While we concur with the prerequisite satisfactory safety rating, we have two major concerns regarding the assignment of that rating. First, current FHWA determination of carrier safety fitness is made at the carrier's principal place of business, which is often not where the physical aspects of hazardous materials transportation take place. As often as not, the principal place of business is a "main office" or "headquarters" type facility far removed from

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the actual working locations. Through experience gained from our Motor Carrier Safety Operations Program in California, we have learned that carrier operations vary greatly from terminal to terminal, and often the "main office" is unaware of what is taking place in subordinate or satellite facilities. For this reason, we believe consideration should be given to conducting the "high risk hazardous materials permit" reviews at the carrier's main, or principal "hazardous materials transportation terminal." This change would allow the reviewer to effectively evaluate the carrier's "willingness and ability to provide the transportation to be authorized by the permit." This could be facilitated by requiring the safety permit application to be sent to the Regional Director, Office of Motor Carriers, for the region where this "operating facility" is located rather than the region where the carrier has its principal place of business. As a related issue, we further suggest that all FHWA safety reviews and compliance reviews used to determine carrier safety compliance should be conducted at working locations for the reasons addressed above.

Our second concern in this area is the actual method of determining a carrier's safety rating. 49 CFR 385.9 requires the FHWA to assign a safety rating following a "safety or compliance review" of a motor carrier operation. We do not believe that a safety review is sufficient to determine a carrier's actual safety compliance. It is our opinion that safety permits for the transportation of "high risk hazardous materials" should be issued only after a carrier's has been assigned a satisfactory safety compliance rating as a result of a compliance review. Further, we strongly recommend that the compliance review process be revised to place more weight on the mechanical condition of the carrier's vehicles. A vehicle out-of-service rate above ten percent should preclude issuance of a high risk hazardous materials safety permit.

With respect to the inspection of motor vehicles transporting highway route controlled quantities of radioactive material, we concur with the proposed inspection criteria and with the application of the inspector qualifications requirements specified in Title 49, Code of Federal Regulations (49 CFR), Section 396.19. Regarding the issue of whether radiological monitoring should be included, we believe that radiological monitoring (and documentation) of highway route controlled radioactive materials shipments should be required after the shipment is loaded aboard the transport vehicle, and before the vehicle departs from the loading site. This should not place an added burden on carriers or shippers, since proper classification of the shipment would involve a determination of the activity of the package.

Although an inspection prior to transport is specifically required, the only requirement addressing the inspection document is that "motor carriers would be required to maintain a written certification of each inspection . . .". There is no mention of carrying a copy of the inspection document or the "written certification" aboard the transport vehicle, which would appear to be a good idea.

The proposal calls for the U.S. DOT identification number prescribed by 49 CFR 390.21 to be the "Safety Permit Number," and points out that this would fulfill the requirement that proof of the existence of such permit is maintained in the motor vehicle. Since all private interstate motor carriers must obtain and display U.S. DOT identification numbers, how will this prove existence of a Safety Permit?

The proposal also states that motor carriers would have to "clearly display the assigned safety permit numbers on the shipping paper or on the appropriate transportation document which contains the description of the hazardous materials being transported . . .". If this additional entry is to be required on shipping papers, we believe the location and manner of display should be addressed specifically. In addition to the entries describing the material, its hazard classification, its identification number and its weight or volume, which have been required for many years, regulations now also require emergency response telephone numbers. Adding yet another required shipping paper entry without specifying where on the document it must appear, or in what format, may not produce the desired effect.

We enthusiastically support the procedure set forth in the preamble for reviewing applications for safety permit renewals, i.e., that the FHWA will check its motor carrier management information database, *State records*, complaint registers, and other compliance information sources before a final decision concerning permit renewal is made." (emphasis added) We note, however that in the proposal, in 49 CFR 397.51, Renewal of safety permit application, there is no mention of **FHWA's** obligations in the renewal process.


G. M. EDGEINGTON, Chief
Enforcement Services Division